



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1996

Mr. Wade Adkins
City Attorney
The City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR96-1676

Dear Mr. Adkins :

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID#100650.

The City of Fort Worth (the "city") and the Alliance Airport Authority¹ received a request for various information relating to the city's contract number 21755. The city raises no exception to the public disclosure of the requested information. You state, however, that the Federal Express Corporation ("Federal Express") and its contractors contend that portions of the information are not subject to required public disclosure based on section 552.110 of the Government Code because such information constitutes a trade secret, commercial information or financial information.

Since the property rights of a third party, Federal Express, are implicated by the release of the requested information here, this office notified Federal Express of this request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Federal Express has responded to our notification by submitting copies of the requested information and stating to this office that "[t]he records requested pertain, in large part, to a design build agreement between Federal Express Corporation and Sandvik Sorting Systems, Inc. ("Sandvik"). I have advised Sandvik to contact your office directly with any exceptions they may desire to assert."

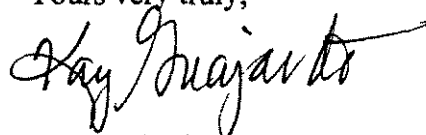
¹You inform us that the Alliance Airport Authority (the "authority") is an industrial development corporation established by the city and that the Fort Worth City Council sits as the authority's board of directors.

Section 552.110 excepts from disclosure "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Thus, this exception contains two prongs: 1) a trade secret, and 2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. When asserting that requested information constitutes a trade secret, a third party must provide relevant facts about the information to support that assertion. *See* Open Records Decision No. 552 (1990) (citing Restatement of Torts § 757 and *Hyde v. Huffines*, 314 S.W.2d 763 (Tex. 1958)). When asserting that requested information meets the second prong of section 552.110, a third party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *See* Open Records Decision No. 639 (1996) (citing *Sharyland Water Supply Corp. V. Block*, 755 F.2d 397 (5th Cir.), *cert. denied*, 471 U.S. 1137 (1985)).

Sandvik has raised no exception to the public disclosure of the requested information. Nor has Federal Express explained why section 552.110 of the Government Code applies to the requested information. Without an explanation as to the applicability of section 552.110, we cannot conclude that it applies in this situation. Accordingly, the city must release the requested information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100650

Enclosures: Submitted documents

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